

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

DAVID BACHMAN)	
Claimant)	
VS.)	
)	Docket No. 234,206
MODERN AIR CONDITIONING, INC.)	
Respondent)	
AND)	
)	
ALLIED MUTUAL INSURANCE COMPANY)	
Insurance Carrier)	

ORDER

Respondent appeals from a preliminary hearing Order entered by Administrative Law Judge Brad E. Avery on April 7, 1999.

ISSUES

The Administrative Law Judge granted claimant's request for medical treatment and temporary total disability benefits. The order for temporary total disability benefits was contingent upon withdrawal of the claim for unemployment compensation benefits.

On appeal, respondent contends the Administrative Law Judge exceeded his jurisdiction. According to respondent, the Administrative Law Judge exceeded his jurisdiction in the following respects:

1. Procedures required by K.S.A. 44-534a were not followed.
2. There is no evidence presented from a health care provider indicating claimant was temporarily totally disabled.
3. The Kansas Department of Human Resources had determined in the unemployment compensation proceeding that claimant was able to work and claimant had certified that he was able to work.
4. There is no provision in the law permitting the Administrative Law Judge to order temporary total disability benefits contingent upon withdrawal of a claim for unemployment compensation.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the record and considering the arguments, the Appeals Board concludes certain of the issues raised by respondent are not jurisdictional issues and the appeal on those issues should be dismissed. As to the jurisdictional issue, the Board concludes that the Order by the Administrative Law Judge should be affirmed.

Respondent contends that the Administrative Law Judge exceeded his jurisdiction ordering temporary total disability in part because the demand letter submitted by the claimant requested medical treatment but not temporary total disability benefits. By amendments which became effective in 1993, K.S.A. 44-534a now provides that seven days before filing an application for preliminary hearing written notice of the intent to file an application must be given. The notice must contain a specific statement of benefit changes being sought. The amendment appears intended to assure that employers know what benefits are sought so they have the opportunity to address that request before a formal hearing. In this case, the initial demand letter, sent in June 1998, requested both medical and temporary total disability benefits. There were, thereafter, numerous continuations of the preliminary hearing date and the hearing of April 2, 1999, was the first and only preliminary hearing. Respondent asserts that a more recent demand letter, apparently one in December 1998, asked only for medical benefits. Respondent's brief indicates this demand will be in the files. But review of the file reveals no demand in December 1998. Claimant, on the other hand, has attached correspondence from March 1999 reflecting that one month before the preliminary hearing respondent knew claimant was asking for temporary total disability benefits. The Board concludes the Administrative Law Judge did not exceed his jurisdiction in ordering temporary total disability benefits.

The remaining issues raised by respondent do not, in the Board's view, amount to jurisdictional issues. Respondent contends, for example, that claimant has not established he is temporarily totally disabled because there is no medical health care provider indicating claimant is temporarily totally disabled. Claimant himself has testified to quite severe limitations and symptoms. But whether a claimant is or is not temporarily totally disabled is a matter within the jurisdiction of the administrative law judge. It is not an issue subject to review on appeal from a preliminary hearing order.

Similarly, whether the actions or decisions in the unemployment compensation proceeding are to be given a res judicata effect in a workers compensation proceeding is not a jurisdictional issue. The Board notes in this case it appears the Department of Human Resources' unemployment compensation proceeding has not been fully adjudicated. But in any event, an administrative law judge has the jurisdiction to determine the effect of those proceedings on the workers compensation issues. Therefore, the question is not subject to review on appeal from a preliminary hearing order.

Finally, the form of the order for temporary total disability benefits does not raise a jurisdictional issue. In this case, the Administrative Law Judge made the order contingent

upon the withdrawal of a claim for unemployment benefits. This contingency does not, in our view, exceed the jurisdiction of the Administrative Law Judge. Whether it does or does not exceed his jurisdiction is the only question which can be addressed at this stage of the proceedings.

The Board concludes that the Administrative Law Judge had jurisdiction to address the question of temporary total disability benefits. Whether claimant is or is not temporarily totally disabled, the effect of the unemployment compensation proceedings, and the contingency placed on the order for temporary totally disability benefits are issues which the Appeals Board does not have jurisdiction to review at this stage of the proceedings.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order entered by Administrative Law Judge Brad E. Avery on April 7, 1999, should be, and the same is hereby, affirmed. As to the non-jurisdictional issues, the appeal is dismissed.

IT IS SO ORDERED.

Dated this ____ day of June 1999.

BOARD MEMBER

c: Michael C. Helbert, Emporia, KS
Bret C. Owen, Topeka, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director